

CECW-OR

MEMORANDUM FOR COMMANDERS, MAJOR SUBORDINATE COMMANDS AND
DISTRICT COMMANDS

SUBJECT: Transportation Equity Act and Federal-Aid Highway Funding Proposals

1. The purpose of this memorandum is to provide preliminary guidance concerning arrangements between a State Department of Transportation (DOT), the Federal Highway Administration (FHWA), and the U.S. Army Corps of Engineers districts, regarding the transfer of State DOT funds to Corps districts under the Transportation Equity Act for the 21st Century (TEA-21). The funding would be to facilitate timely decisions on permit applications for work associated with projects that qualify for the provisions of Section 1309 of the TEA-21 relating to environmental streamlining and the National Environmental Policy Act (NEPA). The FHWA is chairing a working group of Federal agencies that would be involved in the streamlining process for FHWA funded highway projects. The group will develop additional guidance to facilitate agreements at the field level for implementing the streamlining provisions, to include the provision of funds to affected Federal agencies. The goal of Section 1309 of TEA-21 is good environmental decisions, arrived at in a timely manner. In the interim, to assist those districts that have been asked to participate in TEA-21 projects, including the acceptance of funds, the following guidance is provided.

2. To meet the requirements of TEA-21, districts should establish procedures for implementing the NEPA, and section 404 streamlining provision of the 1988 interagency Red Book, Applying the Section 404 Permit Process to Federal Aid Highway Projects. The Red Book model forms the basis for the streamlining envisioned by Section 1309(a) of TEA-21. Those Corps districts that have made such arrangements that include time limitations, meet the requirements that the time limits must be, "...less than the customary time necessary for such review..." as required by Section 1309(e)(2)(B) of TEA-21. In other words, if the district has implemented the streamlining in the Red Book, then accepting the funds is appropriate to maintain or improve the districts performance at levels that are better than those for similar projects. A Corps district may also accept such funds to improve performance, if the district can reasonably demonstrate that its decisions on FHWA funded projects are taking longer than the typical decision time for individual permits requiring a similar level of review in the district. These are essential elements for demonstrating compliance with the provisions of TEA-21.

3. When a State DOT requests that the FHWA approve the transfer of State DOT funds to a Corps district for assisting in meeting time limits established to improve the coordinated review process, the district must pay particular attention to the following:

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a. Where several States are providing funds, or where multiple projects within a State are being reviewed, the Corps must require that any funding arrangement include a clear statement of priority, from each State DOT, and timing expectations for each project. The Corps should monitor progress and expenditure of the funds, taking corrective action to cope with unforeseen events that result in priority or timing shifts.

b. Funding amounts and the funding duration must be set in advance of any work to be accomplished and the funds must be received by the Corps before the Corps does the work to be covered by those transferred funds. The accounts are to be managed by the Corps Regulatory Program.

c. The Corps district should use the funds to free up existing expertise to concentrate on the FHWA assisted applications, or to obtain the services of qualified personnel (e.g., Corps Planning and Engineering resources, contractors, and the like) to assist in the review and evaluation process.

d. Because travel and interagency interaction are key elements for meeting the coordination requirements of TEA-21, arrangements should be made to use some of the TEA-21 funding to enhance that capability.

e. Documentation for the streamlining agreement and funding arrangements must be acceptable to the State DOT, the FHWA, and the Corps district.

3. Should you have questions on implementation of this guidance, please contact Mr. Fred Skaer, of the FHWA Environmental Analysis Division, at (202) 366-2058; or Mr. Jack Chowning, of the Corps Regulatory Program, at (202) 761-1781.

FOR THE COMMANDER:

RUSSELL L. FUHRMAN
Major General, USA
Director of Civil Works

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